

ORDINANCE COMMITTEE DISCUSSION DRAFT 2/27/07  
SHOWING CHANGES FROM EXISTING CODE  
(Except Chapter 22.68 for ease of reading)

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA AMENDING CHAPTER 22.68 AND SECTIONS 28.87.030 AND 28.92.110; AND ADDING CHAPTER 28.69 AND SECTION 28.15.083 RELATING TO DESIGN REVIEW AND MAXIMUM NET SQUARE FOOTAGE STANDARDS (FLOOR TO LOT AREA RATIOS) FOR SINGLE FAMILY HOMES.

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 22.68 of Title 22 of the Santa Barbara Municipal Code is amended to read as follows:

**22.68.010 Architectural Board of Review.**

A. **PURPOSE.** Section 814 of the Santa Barbara City Charter creates and establishes an Architectural Board of Review for the City to promote the general public welfare of the City and to protect and preserve the natural and historical charm and beauty of the City and its aesthetic appeal and beauty.

B. **MEMBERSHIP.** The Architectural Board of Review shall be composed of nine (9) members to be appointed as provided in the charter. At least two (2) members of such Board shall be licensed architects, at least two (2) members of such Board shall be licensed landscape architects, and at least three (3) other members shall possess professional qualifications in related fields, including, but not limited to, building design, structural engineering or industrial design. These members shall be electors of the City and shall hold office at the pleasure of the appointive power.

C. **OFFICERS - QUORUM.** The members of the Architectural Board of Review shall elect from their own members a chairman and vice-chairman. The Community Development Director or his or her designee shall act as secretary and record Board action and render written reports thereof for the Board as required by this Chapter. The Board shall adopt its own rules of procedure. Four (4) members shall constitute a quorum, one (1) of which shall be an architect.

**22.68.020 Design Review - Non-residential and Multi-Family Residential Buildings**

**A. BUILDING PERMITS - NONRESIDENTIAL, MULTIPLE RESIDENTIAL, DUPLEX, TWO OR MORE DETACHED RESIDENTIAL UNITS AND MIXED USE.** Any application for a building permit to construct, alter, or add to the exterior of a non-residential, multi-family residential, residential duplex or mixed use (residential and non-residential) building or structure, or which will result in two or more detached residential units on one lot in any zone other than the Single Family Zones listed in Chapter 28.15 of this Code, shall be referred to the Architectural Board of Review for design review in accordance with the requirements of this Chapter.

**B. SUBDIVISION GRADING PLANS.** All subdivision grading plans involving grading on a lot or lots located in any zone other than the Single Family Zones listed in Chapter 28.15 of this Code shall be referred to the Architectural Board of Review for a review of the proposed grading.

**C. GRADING PERMITS.** Any application for a grading permit that proposes grading on a lot or lots located in any zone other than the Single Family Zones listed in Chapter 28.15 of this Code and which application is not submitted in connection with an application for a building permit for the construction or alteration of a building or structure on the same lot or lots shall be referred to the Architectural Board of Review for a review of the proposed grading.

**D. EXTERIOR COLOR.** The Architectural Board of Review shall review the exterior color of any new building or structure that is subject to design review by the Architectural Board of Review in accordance with the requirements of this Chapter. If a change of the exterior color of a building or structure is proposed in connection with another alteration to the building or structure that is subject to design review by the Architectural Board of Review in accordance with the requirements of this Chapter, the Architectural Board of Review shall review the proposed change of color in the course of the design review of the other alteration(s).

**E. HIGHWAY 101 IMPROVEMENTS.** Improvements to U.S. Highway 101 or appurtenant highway structures which require a Coastal Development Permit pursuant to the City's Certified Local Coastal Program and which are located within the Highway 101 Santa Barbara Coastal Parkway Special Design District as defined by Municipal Code Section 22.68.080 shall be referred to the Architectural Board of Review for design review, except for improvements to those portions of U.S. Highway 101 and its appurtenant structures that are located within the El Pueblo Viejo Landmark District which are subject to review by the Historic Landmarks Commission pursuant to SBMC §22.22.140(B).

**F. ARCHITECTURAL BOARD OF REVIEW SUBMITTAL REQUIREMENTS.** Applications for review by the Architectural Board of Review shall be made in writing in such form as is approved by the Community Development Director.

**G. ADMINISTRATIVE REVIEW AND APPROVAL.** Minor design alterations, as such minor design alterations are specified in the Architectural Board of Review Design Guidelines, may be approved as a ministerial action by the Community Development Director or the Director's designee without review by the Architectural Board of Review. The Community Development Director or the Director's designee shall have the

authority and discretion to refer any minor design alteration to the Architectural Board of Review if, in the opinion of the Community Development Director, the alteration has the potential to have an adverse effect on the architectural integrity of the building, structure or surrounding property.

#### **22.68.030 Alternative Design Review by Historic Landmarks Commission.**

If an application for a building permit, grading permit, or subdivision grading plan that is otherwise subject to review by the Architectural Board of Review in accordance with the requirements of this Chapter is proposed for any of the following locations, the application shall be referred to the Historic Landmarks Commission for such review:

- A. A lot on which a City Landmark or City Structure of Merit is located,
- B. A property on the City's Potential Historic Resources List, or
- C. Any property located within El Pueblo Viejo Landmark District or another landmark district.

This referral to the Historic Landmarks Commission is supplemental to any other design review requirements required by Chapter 22.22 due to the status of any building or structure on the lot or the location of the lot within a landmark district. The fact that an application for a building permit or grading permit is not subject to design review pursuant to this Chapter 22.68 shall not excuse or exempt an application from review pursuant to Chapter 22.22 of this Code.

#### **22.68.040 Architectural Board of Review Notice and Hearing.**

A. **NOTICED HEARINGS.** The Architectural Board of Review shall hold a noticed hearing prior to taking action on any project described in Subsection D of this Section. Such hearings shall be conducted in accordance with the requirements of this Section.

B. **MAILED NOTICE.** Not less than ten calendar days before the date of the hearing, the City shall cause written notice of the project hearing to be sent by first class mail to: (1) the applicant, (2) the current record owner of each of the twenty (20) lots closest to the lot which is the subject of the action, and (3) the current record owner of any lot, or any portion of a lot, which is located not more than one hundred feet from the exterior boundaries of the lot which is the subject of the action. The written notice shall advise the recipient of the following: (1) the date, time and location of the hearing, (2) the right of the recipient to appear at the hearing and to be heard by the Architectural Board of Review, (3) the location of the subject property, and (4) the nature of the application subject to design review. In addition to the required mailed notice specified in this Subsection, the City may also require public notice of the hearing to be provided by the applicant in any other manner that the City deems necessary or desirable, including, but not limited to, posted notice on the project site. However, the failure of any person or entity to receive notice given pursuant to such additional noticing methods shall not constitute grounds for any court to invalidate the actions of the City for which the notice was given.

C. **PROJECTS REQUIRING DECISIONS BY THE CITY COUNCIL, PLANNING COMMISSION, OR STAFF HEARING OFFICER.** Whenever a project requires another land use decision or approval by the City Council, the Planning Commission, or the Staff

Hearing Officer, the mailed notice of hearing for the first concept hearing before the Architectural Board of Review shall satisfy the notice requirements of this Section or the notice requirements applicable to the other land use decision or approval, whichever are greater. However, nothing in this Section shall require either: 1. notice of any hearing before the Architectural Board of Review to be published in a newspaper or 2. mailed notice of hearings before the Architectural Board of Review after the first hearing conducted by the Architectural Board of Review, except as otherwise provided in the Architectural Board of Review Guidelines adopted by resolution of the City Council.

**D. PROJECTS THAT REQUIRE NOTICED HEARING.** The following projects must be preceded by a noticed hearing prior to design approval or disapproval by the Architectural Board of Review:

1. A new residential duplex unit, multi-family residential unit, or non-residential building,
2. The addition of over 500 square feet of net floor area or the addition of a new story to a residential duplex unit or multi-family residential unit,
3. An addition or alteration to a multi-family residential unit that will result in an additional residential unit,
4. Small non-residential additions as defined in Chapter 28.87 of this Code,
5. Projects involving grading in excess of 250 cubic yards outside the footprint of any main building or exterior lighting with the apparent potential to create glare on neighboring parcels, or
6. Projects that would not otherwise require mailed notice and that in the judgment of the Architectural Board of Review or the Community Development Director could result in a significant or substantial deprivation of private property rights of other landowners.

#### **22.68.050 Architectural Board of Review Referral to Planning Commission.**

**A. PLANNING COMMISSION APPROVAL.** If an application for development regulated pursuant to this Chapter requires the preparation and certification of an environmental impact report ("EIR") pursuant to the California Environmental Quality Act, the EIR shall be referred to the Planning Commission for review, consideration, and potential certification. In addition, when an EIR is referred to the Planning Commission for review and potential certification pursuant to this Section, the underlying application must also be approved, disapproved or conditionally approved by the Planning Commission, in accordance with any standards set forth by Council Resolution, prior to final Architectural Board of Review action on the application.

**B. PLANNING COMMISSION COMMENTS.** When the Architectural Board of Review determines that a project is proposed for a site which is highly visible to the public, the Board may, prior to taking final action on the application, require presentation of the application to the Planning Commission solely for the purpose of obtaining comments from the Planning Commission regarding the application for use by the Architectural Board of Review in its deliberations.

**C. PLANNING COMMISSION NOTICE AND HEARING.** The Planning Commission shall hold a noticed hearing prior to taking any action on a project subject to its review and approval or comments under this Section. Notice of the Planning Commission

hearing shall be provided in accordance with the requirements of Section 22.68.040.

**22.68.060 Fees.**

No application required to be referred to the Architectural Board of Review shall be considered complete unless accompanied by the application fee in the amount established by resolution of the City Council.

**22.68.070 Issuance of Permits.**

No building permit or grading permit, the application for which is subject to design review by the Architectural Board of Review in accordance with the requirements of this Chapter 22.68, shall be issued without the approval of the Board or the City Council, on appeal.

**22.68.080 Special Design Districts.**

A. **DISTRICT IDENTIFICATION.** The following areas are identified as City Special Design Districts:

1. **MISSION AREA SPECIAL DESIGN DISTRICT.** All real property located within one thousand feet (1000') of Part II of El Pueblo Viejo Landmark District, as legally described in Section 22.22.100(b).

2. **HILLSIDE DESIGN DISTRICT.** All real property within the Hillside Design District as delineated on the maps labeled "Hillside Design District" which is part of this Code and is shown at the end of this Chapter. All notations, references, and other information shown on said map are incorporated herein and made a part hereof. The entirety of any annexation shall become a part of the Hillside Design District upon annexation.

3. **HIGHWAY 101 SANTA BARBARA COASTAL PARKWAY SPECIAL DESIGN DISTRICT.** All real property within the State owned or leased right-of-way of Highway 101 and all City owned or leased right-of-way which intersects Highway 101 within the S-D-3 Coastal Overlay Zone.

4. **LOWER RIVIERA SURVEY AREA - BUNGALOW DISTRICT.** All real property within "Lower Riviera Survey Area – Bungalow District" as shown on the map labeled as such and appended to the end of this Chapter – hereinafter referred to as the "Bungalow District."

**22.68.090 Special Design District – Lower Riviera Survey Area (Bungalow District).**

A. **SPECIAL DESIGN DISTRICT AREA MAP – LOWER RIVIERA SURVEY AREA - BUNGALOW DISTRICT.** Applications for building permits to construct, alter, or add to multi-family residential units or residential duplexes on lots located within the "Lower Riviera Survey Area - Bungalow District" established pursuant to SBMC Section 22.68.080 shall be subject to the design review in accordance with the requirements of

this Section 22.68.090 as follows:

**B. REVIEW OF BUILDING PERMIT APPLICATIONS.** Applications for building permits to construct, alter, or add to multi-family residential units or residential duplexes on lots located within the Bungalow District shall be referred to the Community Development Director for review to determine if the application constitutes a project to demolish the structure. For the purposes of this Section, a "demolition" shall be as defined in subparagraph (K) of Santa Barbara Municipal Code Section 22.22.020. Such a determination shall be made by the Community Development Director or the Director's designee in writing within thirty (30) days of the date of the original application. If the Community Development Director or the Director's designee determines that the property is eligible for listing on the City's Potential Historic Resources list, the demolition application shall be referred to the Historic Landmarks Commission for review pursuant to Chapter 22.22. Otherwise, if the Community Development Director or the Director's designee determines that the application does constitute an application to demolish the structure, such application shall be referred to the City's Architectural Board of Review for review by the Board in accordance with the requirements of this Section. If the Community Development Director or the Director's designee determines that the application does not constitute a demolition under the terms of this Section, the building permit shall be issued upon compliance with the otherwise applicable requirements of this Code for appropriate and required design and development review.

**C. REVIEW OF BUNGALOW DISTRICT DEMOLITION APPLICATIONS BY THE ARCHITECTURAL BOARD OF REVIEW.** An application referred to the Architectural Board of Review pursuant to Subsection B above shall be reviewed by the Architectural Board of Review in accordance with the hearing, noticing, and appeal procedures established in SBMC Sections 22.68.040 and 22.68.120. An application referred to the Architectural Board of Review pursuant to Subsection B above shall not be approved unless the Architectural Board of Review makes all of the following findings with respect to that application:

1. That the demolition will not result in the loss of a structure containing a primary feature or features of Bungalow or Arts and Crafts style residential architecture, which features are worthy of or appropriate for historical preservation;
2. That the demolition will not result in the loss of a structure which, although not eligible as a City Historic Resource, is a prime example of the Bungalow or Arts and Crafts style residential building appropriate for historical preservation;
3. That the demolition will not result in the loss of a structure which is prominent or which is a prime example of the Bungalow or Arts and Crafts style residential architecture for which this neighborhood is characterized or known.

**D. ABR CONDITIONAL APPROVAL OF DEMOLITION WITHIN THE BUNGALOW DISTRICT.** Notwithstanding the above-stated requirement for appropriate demolition findings, the ABR may approve a demolition application within the Bungalow District if the ABR conditions the demolition permit such that any proposed future development of the real property upon which the structure or structures are located must comply with express conditions of approval designed to preserve certain existing architectural features or buildings, as determined appropriate by the ABR.

Such conditions may provide that any future development of the property involved must either incorporate the existing structures, in whole or in part, into the new development, or it must preserve certain features or aspects of the existing structures or of the site such that these features are incorporated into any future development of the real property, either through the preservation of the building or feature or its replication in the new development, as may be determined appropriate by the ABR.

Such conditions of approval shall be prepared in written form acceptable to the Community Development Director and the City Attorney and shall be recorded in the official records of Santa Barbara County with respect to the involved real property such that these conditions shall be binding on all future owners of the real property as conditions imposed on any new development for a period of twenty (20) years after the conditional approval of the original demolition application and the completion of the demolition.

**E. REVIEW OF NEW DEVELOPMENT WITH BUNGALOW DISTRICT BY ARCHITECTURAL BOARD OF REVIEW.** Applications for building permits to construct new multi-family residential buildings or residential duplexes on lots located within the Bungalow District shall also be referred to the Architectural Board of Review for development plan review and approval in accordance with the public hearing, noticing and appeal requirements of SBMC Section 22.68.040 and 22.68.120, provided that the property owner/applicant may be required to submit those development plan materials deemed necessary for full and appropriate review by the ABR prior to the ABR hearing.

**F. BUNGALOW DISTRICT FINDINGS.** The ABR shall not approve a new development within the Bungalow District unless it makes both of the following findings:

1. Express conditions of approval have been imposed on the proposed development which appropriately incorporate the existing structures or architectural features or other aspects of these structures (or of the site involved) into the new development, or these structures, features or aspects will be appropriately replicated in the new development;
2. The proposed development will not substantially diminish the unique architectural style and character of the Bungalow District as a residential neighborhood of the City.

**G. GUIDELINES FOR SPECIAL DESIGN DISTRICT.** The Lower Riviera Special Design District Guidelines adopted by resolution of the City Council shall provide direction and appropriate guidance to the ABR, the Planning Commission and City staff in connection with the review of applications filed pursuant to this Section.

#### **22.68.100 Signs.**

Application for sign permits shall be considered by the Architectural Board of Review only upon an appeal filed pursuant to Section 22.70.050.9 of this Code.

#### **22.68.110 Approval of Plans for Buildings, or Structures, on City Lands.**

No building or structure shall be erected upon any land owned or leased by the City, or allowed to extend over or upon any street, or other public property, unless plans for the same and the location thereof shall first have been submitted to the Architectural

Board of Review or the Historic Landmarks Commission, as applicable, for its approval.

**22.68.120 Appeal to Council - Notice and Hearing.**

A. **PROCEDURE FOR APPEAL.** Any action of the Architectural Board of Review or the Planning Commission taken pursuant to this Chapter 22.68 may be appealed to the City Council by the applicant or any interested person pursuant to Chapter 1.30 of this Code. In deciding such an appeal, the City Council shall make those findings required of the Board or the Commission with respect to a determination made pursuant to this Chapter.

B. **NOTICE OF APPEAL.** In addition to the procedures specified in Chapter 1.30, notice of the public hearing before the City Council on an appeal from a decision of the Architectural Board of Review or the Planning Commission made pursuant to this Chapter 22.68 shall be provided in the same manner as notice was provided for the hearing before the Architectural Board of Review or the Planning Commission.

C. **FEE FOR APPEAL.** At the time of filing an appeal, the appellant shall pay a fee in the amount established by resolution of the City Council.

SECTION 2. Title 22 of the Santa Barbara Municipal Code is hereby amended by adding Chapter 22.69 which reads as follows:

**22.69.010 Neighborhood Preservation Committee.**

A. **PURPOSE.** A Neighborhood Preservation Committee is hereby created and established for the City to promote the general public welfare of the City and to protect and preserve the natural and historical charm and beauty of the City and its aesthetic appeal and beauty. The goal of the Neighborhood Preservation Committee shall be to ensure that single residential unit projects are compatible with the surrounding neighborhood in size and design. The Neighborhood Preservation Committee is also charged with the task of preserving the City's visual resources and promoting the ecological sustainability of the City's built environment through the design review process.

B. **MEMBERSHIP.** The Neighborhood Preservation Committee shall be composed of five (5) members appointed by the City Council. One (1) member shall be a licensed architect appointed from the members of the Architectural Board of Review, one (1) member shall be a licensed landscape architect or other related professional appointed from the members of the Architectural Board of Review, one (1) member shall be a licensed architect who is not a member of the Architectural Board of Review, one (1) member shall be a licensed landscape architect or other related professional who is not a member of the Architectural Board of Review, and one (1) member shall be appointed from the public at large. If either of the Committee members appointed from the Architectural Board of Review is unavailable, another member of the Architectural Board of Review may serve as an alternate. All members of the Committee shall reside within Santa Barbara County and shall hold office at the pleasure of the appointive power.



**C. CONDUCT OF MEETINGS.** The members of the Neighborhood Preservation Committee shall elect from their own members a chairman and vice-chairman. The Community Development Director or his or her designee shall act as secretary and record Committee action and render written reports thereof for the Committee as required by this Chapter. The rules of procedure for the Committee shall be approved by resolution of the City Council. Three (3) members shall constitute a quorum, one (1) of whom shall be a licensed architect or landscape architect.

## **22.69.020 Neighborhood Preservation - Single Family Residential Unit Design Review**

**A. BUILDING PERMITS - SPECIAL DESIGN DISTRICTS.** Applications for building permits to construct, alter, or add to the exterior of a single family residential unit or a related accessory structure on a lot or lots within the Special Design Districts identified in Section 22.68.080 shall be referred to the Neighborhood Preservation Committee for design review in accordance with the requirements of this Chapter and the Neighborhood Preservation Committee Guidelines.

**B. BUILDING PERMITS - SINGLE FAMILY RESIDENTIAL UNITS.** Applications for building permits to construct, alter, or add to the exterior of a single family residential unit or a related accessory structure on a lot or lots that are not within a Special Design District identified in Section 22.68.080 shall be referred for to the Neighborhood Preservation Committee for design review in accordance with the requirements of this Chapter and the Neighborhood Preservation Committee Guidelines if the project involves any of the following:

1. The construction, alteration, or addition of any portion of a building that is taller than one story and a basement, or
2. The construction, alteration, or addition of any portion of a building or structure that has a maximum building height of seventeen feet (17') or more, or
3. A net floor area of all floors of all existing and new buildings on the lot that will exceed four thousand (4,000) square feet, or
4. The construction, alteration, or addition of any roof deck or a balcony on the second or higher floor of any building that will extend perpendicularly more than three feet (3') from the adjacent exterior wall or will be more than seven feet (7') in length in the dimension parallel to the adjacent exterior wall, or
5. The installation of a manufactured home, mobile home or factory-built home (as those terms are defined in the California Health and Safety Code) subject to the limitations on review specified in Government Code section 65852.3 et seq., or
6. The installation of a single family residential unit that was, as a whole or in part, previously located on another lot.

**C. SUBDIVISION GRADING PLANS.** All subdivision grading plans involving grading on a lot or lots located in any one of the Single Family Zones listed in Chapter 28.15 of this Code shall be referred to the Neighborhood Preservation Committee for a review of the proposed grading.

**D. GRADING PERMITS.** Applications for grading permits that propose grading on a lot or lots located within a Special Design District described in Section 22.68.080 and which are not submitted in connection with an application for a building permit for the

construction or alteration of a building or structure on the same lot or lots shall be referred to the Neighborhood Preservation Committee for a review of the proposed grading. Prior to approving a grading permit referred to the Neighborhood Preservation Committee pursuant to this Subsection D, the Neighborhood Preservation Committee shall find, in addition to the findings in Section 22.69.060, that the proposed grading:

1. Will result in no significant increase in siltation or decrease in water quality of streams, drainages or water storage facilities to which the property drains; and
2. Will result in no substantial loss of southern oak woodland habitat.

**E. VEGETATION REMOVAL PERMITS.** Applications for vegetation removal permits on a lot or lots located within a Special Design District described in Section 22.68.080 shall be referred to the Neighborhood Preservation Committee for a review of the vegetation removal. Prior to approving a vegetation removal permit referred to the Neighborhood Preservation Committee pursuant to this Subsection E, the Neighborhood Preservation Committee shall find, in addition to the findings in Section 22.69.060, that the proposed vegetation removal:

1. Will result in no significant increase in siltation or decrease in water quality of streams, drainages or water storage facilities to which the property drains; and
2. Will result in no substantial loss of southern oak woodland habitat; and
3. Will comply with all applicable provisions of Chapter 22.10, Vegetation Removal, of this Code.

**F. SUBMITTAL REQUIREMENTS.** Applications for review by the Neighborhood Preservation Committee shall be made in writing in such form as is approved by the Director of Community Development.

**G. ADMINISTRATIVE APPROVAL.** Minor design alterations, as such minor design alterations are specified in the Single Family Design Guidelines or the Neighborhood Preservation Committee Guidelines, may be approved as a ministerial action by the Community Development Director or the Director's designee without review by the Neighborhood Preservation Committee. The Community Development Director or the Director's designee shall have the authority and discretion to refer any minor design alteration to the Neighborhood Preservation Committee if, in the opinion of the Community Development Director, the alteration has the potential to have an adverse effect on the architectural integrity of the building, structure or surrounding property.

**H. REBUTTABLE PRESUMPTION.** There is a rebuttable presumption that any grading, construction of retaining walls, or removal of trees that occurred within two years prior to the submittal of an application for a building permit to construct, alter, or add to a single family residential unit or related accessory structures was done in anticipation of such application and said activities will be included in determining whether the project is subject to review by the Neighborhood Preservation Committee pursuant to this Chapter.

#### **22.69.030 Alternative Design Review by Historic Landmarks Commission.**

If an application for a building permit, grading permit, vegetation removal permit, or subdivision grading plan that is otherwise subject to review by the Neighborhood Preservation Committee in accordance with the requirements of this Chapter is

proposed for any of the following locations, the application shall be referred to the Historic Landmarks Commission for such review:

- A. A lot on which a City Landmark or City Structure of Merit is located,
- B. A property on the City's Potential Historic Resources List, or
- C. Any property located within El Pueblo Viejo Landmark District or another landmark district.

This referral to the Historic Landmarks Commission is supplemental to any other design review requirements required by Chapter 22.22 due to the status of any building or structure on the lot or the location of the lot within a landmark district. The fact that an application for a building permit, grading permit, or vegetation removal permit is not subject to design review pursuant to this Chapter 22.69 shall not excuse or exempt an application from review pursuant to Chapter 22.22 of this Code.

#### **22.69.040 Neighborhood Preservation Committee Notice and Hearing.**

A. **NOTICED HEARINGS.** The Neighborhood Preservation Committee shall hold a noticed hearing prior to taking action on any project described in Subsection D of this Section. Such hearings shall be conducted in accordance with the requirements of this Section.

B. **MAILED NOTICE.** Not less than ten calendar days before the date of the hearing, the City shall cause written notice of the project hearing to be sent by first class mail to: (1) the applicant, (2) the current record owner of each of the twenty (20) lots closest to the lot which is the subject of the action, and (3) the current record owner of any lot, or any portion of a lot, which is located not more than one hundred feet from the exterior boundaries of the lot which is the subject of the action. The written notice shall advise the recipient of the following: (1) the date, time and location of the hearing, (2) the right of the recipient to appear at the hearing and to be heard by the Neighborhood Preservation Committee, (3) the location of the subject property, and (4) the nature of the application subject to design review. In addition to the required mailed notice specified in this Subsection, the City may also require public notice of the hearing to be provided by the applicant in any other manner that the City deems necessary or desirable, including, but not limited to, posted notice on the project site. However, the failure of any person or entity to receive notice given pursuant to such additional noticing methods shall not constitute grounds for any court to invalidate the actions of the City for which the notice was given.

C. **PROJECTS REQUIRING DECISIONS BY THE CITY COUNCIL, PLANNING COMMISSION, OR STAFF HEARING OFFICER.** Whenever a project requires another land use decision or approval by the City Council, the Planning Commission, or the Staff Hearing Officer, the mailed notice of hearing for the first concept hearing before the Neighborhood Preservation Committee shall satisfy the notice requirements of this Section or the notice requirements applicable to the other land use decision or approval, whichever are greater. However, nothing in this Section shall require either: 1. notice of any hearing before the Neighborhood Preservation Committee to be published in a newspaper or 2. mailed notice of hearings before the Neighborhood Preservation Committee after the first hearing conducted by the Neighborhood Preservation Committee, except as otherwise provided in the Neighborhood Preservation Committee

Guidelines adopted by resolution of the City Council.

**D. PROJECTS THAT REQUIRE PUBLIC HEARING.** The following projects must be preceded by a noticed hearing prior to design approval or disapproval by the Neighborhood Preservation Committee:

1. New single family residential units,
2. Additions of over 500 square feet of net floor area or a new story to a single family residential unit,
3. Projects involving grading in excess of 250 cubic yards outside the footprint of any main building or exterior lighting with the apparent potential to create glare on neighboring parcels, or
4. Projects that would not otherwise require mailed notice and that in the judgment of the Neighborhood Preservation Committee or the Community Development Director could result in a significant or substantial deprivation of private property rights of other landowners.

#### **22.69.050 Neighborhood Preservation Ordinance Findings.**

If an application for a permit is referred to the Neighborhood Preservation Committee for review pursuant to Section 22.69.020 and the Neighborhood Preservation Committee Guidelines, the Neighborhood Preservation Committee shall make the findings specified below prior to approving the permit.

**A. NEIGHBORHOOD PRESERVATION FINDINGS.** Prior to approval of any permit application, the Neighborhood Preservation Committee shall make each of the following findings:

1. **Consistency & Appearance.** The proposed development will be consistent with the scenic character of the City and will enhance the appearance of the neighborhood.
2. **Compatibility.** The proposed development will be compatible with the neighborhood, and its size, bulk, and scale is appropriate to the site and neighborhood.
3. **Quality Architecture & Materials.** The proposed buildings and structures are designed with quality architectural details. Proposed materials and colors will maintain the natural appearance of the ridgeline or hillside.
4. **Trees.** The proposed project will not remove or significantly impact any designated Specimen Tree, Historic Tree or Landmark Tree. The proposed project, to the maximum extent feasible, preserves and protects healthy, non-invasive trees with a trunk diameter of four inches (4") or more measured four feet (4') above natural grade. If the project includes the removal of any healthy, non-invasive tree with a diameter of four inches (4") or more measured four feet (4') above natural grade, the project includes a plan to mitigate the impact of such removal by planting replacement trees in accordance with applicable tree replacement ratios.
5. **Health, Safety and Welfare.** The public health, safety and welfare will be appropriately protected and preserved.

6. **Good Neighbor Guidelines.** The project generally complies with the Good Neighbor Guidelines regarding privacy, landscaping, noise and lighting.

7. **Public Views.** The development, including proposed structures and grading, will preserve significant public scenic views of and from the hillside.

B. **HILLSIDE DESIGN DISTRICT FINDINGS.** In addition to the findings specified in Subsection A above, prior to approval of any permit application for development on a lot within the Hillside Design District described in Section 22.68.080, the Neighborhood Preservation Committee shall make each of the following findings:

1. **Natural Topography Protection.** The development, including the proposed structures and grading, is appropriate to the site, is designed to avoid visible scarring, and will not significantly modify the natural topography of the site or the natural appearance of any ridgeline or hillside.

2. **Building Scale.** The development will maintain a scale and form which blends with the hillside by minimizing the visual appearance of structure(s) and the overall height of structures.

#### **22.69.060 Neighborhood Preservation Committee Referral to Planning Commission; Architectural Board of Review Comments.**

A. **PLANNING COMMISSION APPROVAL.** If an application for development regulated pursuant to this Chapter requires the preparation and certification of an environmental impact report ("EIR") pursuant to the California Environmental Quality Act, the EIR shall be referred to the Planning Commission for review, consideration, and potential certification. In addition, when an EIR is referred to the Planning Commission for review and potential certification pursuant to this Section, the underlying application must also be approved, disapproved or conditionally approved by the Planning Commission, making the findings required pursuant to Section 28.69.050, prior to final action on the application by the Neighborhood Preservation Committee.

B. **ARCHITECTURAL BOARD OF REVIEW COMMENTS.** When the Neighborhood Preservation Committee determines that a project is proposed for a site which is highly visible to the public, the Committee may, prior to taking final action on the application, require presentation of the application to the Architectural Board of Review solely for the purpose of obtaining comments from the Architectural Board of Review regarding the application for use by the Neighborhood Preservation Committee in its deliberations.

C. **NOTICE AND HEARING.** Prior to taking any action or making any comments regarding an application pursuant to this Section, the Planning Commission or the Architectural Board of Review shall hold a noticed hearing. Notice of the hearing shall be provided in accordance with the requirements of Section 22.69.040.

#### **22.69.070 Fees.**

No application required to be referred to the Neighborhood Preservation Committee or the Planning Commission pursuant to this Chapter shall be considered complete and no appeal of a decision of the Committee or the Commission shall be considered complete unless accompanied by the application fee or appeal fee in the amount

established by resolution of the City Council.

#### **22.69.80 Issuance of Permits.**

No building permit, grading permit, vegetation removal permit, or subdivision grading plan, the application for which is subject to the review of the Neighborhood Preservation Committee or the Planning Commission pursuant to this Chapter 22.69, shall be issued without the approval of the Committee or the City Council, on appeal.

#### **22.69.090 Special Design District – Lower Riviera Survey Area (Bungalow District).**

**A. SPECIAL DESIGN DISTRICT AREA MAP – LOWER RIVIERA SURVEY AREA - BUNGALOW DISTRICT.** Applications for building permits to construct, alter, or add to single family residential units or related accessory buildings or structures on lots located within the “Lower Riviera Survey Area - Bungalow District” established pursuant to SBMC Section 22.68.080 shall be subject to design review in accordance with the requirements of this Section 22.69.090 as follows:

**B. REVIEW OF BUILDING PERMIT APPLICATIONS.** Applications for building permits to construct, alter, or add to single residential units on lots located within the Bungalow District shall be referred to the Community Development Director for review to determine if the application constitutes a project to demolish the structure. For the purposes of this Section, a “demolition” shall be as defined in subparagraph (K) of Santa Barbara Municipal Code Section 22.22.020. Such a determination shall be made by the Community Development Director or the Director’s designee in writing within thirty (30) days of the date of the original permit application. If the Community Development Director or the Director’s designee determines that the property is eligible for listing on the City’s Potential Historic Resources list, the application shall be referred to the Historic Landmarks Commission for review pursuant to Chapter 22.22. Otherwise, if the Community Development Director or the Director’s designee determines that the application does constitute an application to demolish the structure, such application shall be referred to the City’s Neighborhood Preservation Committee for review by the Committee in accordance with the requirements of this Section. If the Community Development Director or the Director’s designee determines that the application does not constitute a demolition under the terms of this Section, the building permit shall be issued upon compliance with the otherwise applicable requirements of this Code for appropriate and required design and development review.

**C. REVIEW OF BUNGALOW DISTRICT DEMOLITION APPLICATIONS BY THE NEIGHBORHOOD PRESERVATION COMMITTEE.** An application referred to the Neighborhood Preservation Committee pursuant to Subsection B above shall be reviewed by the Committee in accordance with the hearing, noticing, and appeal procedures established in SBMC Sections 22.69.040 and 22.69.100. An application referred to the Neighborhood Preservation Committee pursuant to Subsection B above shall not be approved unless the Neighborhood Preservation Committee makes all of the following findings with respect to that application:

1. That the demolition will not result in the loss of a structure containing a

primary feature or features of Bungalow or Arts and Crafts style residential architecture, which features are worthy of or appropriate for historical preservation;

2. That the demolition will not result in the loss of a structure which, although not eligible as a City Historic Resource, is a prime example of the Bungalow or Arts and Crafts style residential building appropriate for historical preservation;

3. That the demolition will not result in the loss of a structure which is prominent or which is a prime example of the Bungalow or Arts and Crafts style residential architecture for which this neighborhood is characterized or known.

**D. CONDITIONAL APPROVAL OF DEMOLITION WITHIN THE BUNGALOW DISTRICT.** Notwithstanding the above-stated requirement for appropriate demolition findings, the Neighborhood Preservation Committee may approve a demolition application within the Bungalow District if the Committee conditions the demolition permit such that any proposed future development of the real property upon which the structure or structures are located must comply with express conditions of approval designed to preserve certain existing architectural features or buildings, as determined appropriate by the Committee.

Such conditions may provide that any future development of the property involved must either incorporate the existing structures, in whole or in part, into the new development, or it must preserve certain features or aspects of the existing structures or of the site such that these features are incorporated into any future development of the real property, either through the preservation of the building or feature or its replication in the new development, as may be determined appropriate by the Committee.

Such conditions of approval shall be prepared in written format acceptable to the Community Development Director and the City Attorney and shall be recorded in the official records of Santa Barbara County with respect to the involved real property such that these conditions shall be binding on all future owners of the real property as conditions imposed on any new development for a period of twenty (20) years after the conditional approval of the original demolition application and the completion of the demolition.

**E. REVIEW OF NEW DEVELOPMENT WITH BUNGALOW DISTRICT BY NEIGHBORHOOD PRESERVATION COMMITTEE.** Applications for building permits to construct new single family residential units on lots located within the Bungalow District shall be referred to the Neighborhood Preservation Committee for development plan review and approval in accordance with the hearing, noticing and appeal requirements of SBMC Section 22.69.040 and 22.69.100.

**F. BUNGALOW DISTRICT FINDINGS.** The Neighborhood Preservation Committee shall not approve a new single residential unit development within the Bungalow District unless it makes both of the following findings:

1. Express conditions of approval have been imposed on the proposed development which appropriately incorporate the existing structures or architectural features or other aspects of these structures (or of the site involved) into the new development, or these structures, features or aspects will be appropriately replicated in the new development;

2. The proposed development will not substantially diminish the unique architectural style and character of the Bungalow District as a residential neighborhood of the City.

**G. GUIDELINES FOR SPECIAL DESIGN DISTRICT.** The Lower Riviera Special Design District Guidelines adopted by resolution of the City Council shall provide direction and appropriate guidance to the Neighborhood Preservation Committee and City staff in connection with the review of applications filed pursuant to this Section.

**22.69.100 Appeals.**

**A. APPEALS FROM THE NEIGHBORHOOD PRESERVATION COMMITTEE.**

Any approval or disapproval of an application reviewed by the Neighborhood Preservation Committee pursuant to this Chapter 22.69 may be appealed to the Architectural Board of Review by the applicant or any interested person. Such an appeal must be filed with the Community Development Department within ten (10) calendar days of the date of the Committee's decision. Notice of the appeal hearing before the Architectural Board of Review on an appeal from a decision of the Neighborhood Preservation Committee made pursuant to this Chapter 22.69 shall be provided in the same manner as notice was provided for the hearing before the Neighborhood Preservation Committee. At the time of filing an appeal, the appellant shall pay a fee in the amount established by resolution of the City Council. Prior to approving the design of a project on appeal, the Architectural Board of Review shall make the findings required pursuant to Section 22.69.050.

**B. APPEALS FROM THE PLANNING COMMISSION OR ARCHITECTURAL BOARD OF REVIEW.** Any approval or disapproval of an application reviewed by the Planning Commission or Architectural Board of Review pursuant to this Chapter 22.69 may be appealed to the City Council by the applicant or any interested person pursuant to Chapter 1.30 of this Code. The appeal must be filed with the City Clerk within ten (10) calendar days of the date of the decision of the Planning Commission or Architectural Board of Review. In addition to the procedures specified in Chapter 1.30, notice of the hearing before the City Council on an appeal from a decision of the Planning Commission or the Architectural Board of Review made pursuant to this Chapter 22.69 shall be provided in the same manner as notice was provided for the hearing before the Planning Commission or the Architectural Board of Review. At the time of filing an appeal, the appellant shall pay a fee in the amount established by resolution of the City Council. Prior to approving the design of a project on appeal, the City Council shall make the findings required pursuant to Section 22.69.050.

SECTION 3. Chapter 28.15 of Title 28 of the Santa Barbara Municipal Code is hereby amended by adding Section 28.15.083 which reads as follows:

**28.15.083 Maximum Net Floor Area for Lots Under 15,000 Square Feet of Net Lot Area (Floor to Lot Area Ratio).**

**A. DEFINITIONS.** For purposes of this section, the following definitions shall apply:

1. **Net Floor Area.** For purposes of this Section, net floor area shall be calculated as follows:



a. General Rule: Net floor area is that area in square feet confined within the exterior walls of a building, but not including the area of the following: exterior walls, vent shafts, courts, and any areas with a ceiling height of less than five (5) feet above finished floor or finished grade, whichever is higher.

b. Special Rules: (i) The area occupied by stairs within the exterior walls of a building shall be counted only on one floor of the building. (ii) Free standing accessory buildings or structures that do not require a building permit for construction or installation are not counted in the net floor area calculation.

2. **Net Lot Area.** The total horizontal area within the lot lines of a lot subtracting the horizontal area within any public rights-of-way on the lot.

B. **MAXIMUM NET FLOOR AREA (Floor to Lot Area Ratio).** For purposes of this Section, the maximum net floor area allowed for a lot shall be calculated according to the following formulae:

<u>Net Lot Area (Sq. Ft.)</u>	<u>Maximum Net Floor Area (Sq. Ft.)</u>
Less than 4,000	2200
4,000 to 9,999	1200 + (.25 multiplied by the net lot area)
10,000 to 14,999	2500 + (.125 multiplied by the net lot area)

The Neighborhood Preservation Committee Guidelines and the Single Family Design Guidelines shall include charts showing representative maximum net floor areas expressed as ratios of net floor area to net lot area that are consistent with these formulae.

C. **PRECLUDED DEVELOPMENT.** No lot in these zones having less than 15,000 square feet of gross lot area shall hereafter be developed with the following improvements (and no application for such development shall be accepted without a request for a modification pursuant to Section 28.92.110.A.6 of this Code):

1. Any building or structure of two (2) or more stories in height if the net floor area of all floors in all existing and proposed new buildings or structures on the lot exceeds the maximum net floor area allowed for the lot by this Section, or

2. Any development where the net floor area of all floors in all existing and proposed new buildings or structures on the lot will exceed eighty-five percent (85%) of the maximum net floor area allowed for the lot and any of the following conditions apply to the lot:

a. The average slope of the lot (as calculated pursuant to section 28.15.080 of this Code) is thirty percent (30%) or greater,

b. The building height of any new or existing building or structure on the lot is twenty-five feet (25') or higher, or

c. The lot is located in the hillside design district established in section 22.68.080 of this Code and the application proposes five hundred (500) or more cubic yards of grading outside the footprint of the main building.

SECTION 4. Section 28.87.030 of Chapter 28.87 of Title 28 of the Santa Barbara Municipal Code is amended to read as follows:

**28.87.030 Uses Permitted.**

A. LESS RESTRICTIVE USES PROHIBITED. The express enumeration and authorization in this title of a particular class of building, structure, premises or use in a designated zone shall be deemed a prohibition of such building, structure, premises or use in all zones of more restrictive classification, except as otherwise specified.

B. ADDITIONAL PERMITTED USES. Uses other than those specifically mentioned in this title as uses permitted in each of the zones may be permitted therein provided such uses are similar to those mentioned and are in the opinion of the City Council no more obnoxious or detrimental to the welfare of the community than the permitted uses in the respective zones. The City Council may approve such uses by ordinance amendment after a recommendation has been received from the Planning Commission.

C. EXCLUSION OF PERMITTED USES. The City Council after a recommendation has been received from the Planning Commission may by ordinance amendment, exclude any permitted use from any zone if in the opinion of the City Council it is obnoxious or detrimental to the welfare of the community.

D. NONCONFORMING BUILDINGS. The following provisions shall apply to all nonconforming buildings and structures or parts thereof legally existing at the effective date of this title.

1. Any nonconforming building or structure may be maintained, improved, or altered only as follows:

a. Improvements that do not change the use or the basic, exterior characteristics or appearance of the building or structure are allowed. Such improvements include but are not limited to the following:

(1) Interior alterations or upgrades to any portion of the nonconforming building or structure, including portions that exceed the current height limitation, such as:

- (a) The replacement of wall coverings;
- (b) The replacement of existing utilities, or the installation of new utilities;
- (c) The replacement of existing interior walls, or the construction of interior walls;
- (d) The replacement of existing insulation, or the installation of new insulation; or
- (e) The replacement of existing floor coverings, or the installation of new floor coverings;

(2) The replacement of structural members, such as studs, rafters, joists, beams, or other structural members, except where it will result in an increase in roof pitch;

(3) The replacement or installation of new foundations and slabs under the existing building footprint;

(4) Seismic safety retrofit improvements;

(5) The demolition and replacement of the nonconforming building or

structure, provided that the following conditions are met:

- (a) The basic, exterior characteristics of the replacement building or structure is not changed, except as allowed in this Section;
- (b) The new structure complies with all applicable height, building story, and net floor area limitations; and
- (c) The demolition and replacement of the nonconforming building or structure does not continue or perpetuate a nonconforming use.
- (6) Additions that conform to the current Zoning standards for the zone.
- (7) Solar energy systems, as defined in subdivision (a) of Civil Code section 801.5, that are installed roughly parallel to, and protrude no higher than ten inches (10") above (measured from the top of the roof or other structure perpendicularly to the highest point of the solar energy system), a roof or other similar structure that is legally nonconforming as to the required yard, may extend into a required yard to the extent of the legal nonconforming roof or other similar structure.

b. Minor improvements that change the exterior characteristics are allowed. Such minor improvements are limited to the following:

- (1) The replacement of exterior wall coverings with the same or different materials;
- (2) The replacement of roofing materials with the same or different materials, except those that require an increase in roof pitch;
- (3) Reduction in the number or size of window or door openings;
- (4) Replacement of existing windows or doors where there is no increase in opening size, or changes in the location of the windows or doors.

c. Minor expansions of the net floor area on lots that are nonconforming as to the maximum net floor area specified in section 28.15.083 are allowed under the following conditions:

- (1) The expansion may not exceed 100 square feet of net floor area over the net floor area legally existing on the lot as of the effective date of section 28.15.083;
- (2) Only one nonconforming expansion is allowed following the effective date of section 28.15.083 (even if the expansion is less than 100 square feet of net floor area); and
- (3) A minor expansion of net square footage pursuant to this subparagraph (c) is not available in connection with the demolition and replacement of a nonconforming building.

2. Nothing in the above provisions shall be construed to prohibit any additions or alterations to a nonconforming structure as may be reasonably necessary to comply with any lawful order of any public authority, such as seismic safety requirements, the Americans with Disabilities Act, or a Notice and Order of the Building Official, made in the interest of the public health, welfare, or safety, provided that modification approvals pursuant to Chapter 28.92 of this Title may be required for such additions or alterations.

E. NONCONFORMING USES. Any nonconforming use of a conforming or nonconforming building may be maintained and continued, provided there is no increase or enlargement of the floor area of the buildings or structures on site which are occupied or devoted to such nonconforming use except as provided in this Subsection, and further provided there is no increase in the intensity of such nonconforming use

except as otherwise provided in this title. When a building containing a nonconforming use is demolished, the nonconforming use shall be deemed discontinued, and such nonconforming use shall not be continued or perpetuated in any replacement building, except as provided in this Subsection. For the purposes of this section, an increase in intensity of use shall include but not be limited to the following: An increase in the number of required parking spaces for the use, or increase in the amount of traffic, noise, odors, vibration, air pollution including dust and other particulate matter, hazardous materials or other detrimental effects on the surrounding community that are generated by the use.

**1. Properties with Nonconforming Residential Density.** Improvements or alterations to a residential structure that do not increase residential density, do not increase floor area (including all accessory buildings except garages and carports), or do not increase the amount of habitable space shall be allowed on lots with nonconforming residential density. For the purpose of this paragraph, residential density shall be defined as the number of dwelling units on a property, except in the R-3, R-4, R-O, C-1, C-2, and C-M Zones, where residential density shall be defined as a combination of the number of dwelling units and the number of bedrooms per unit on a property. The following improvements are allowed, provided that any portion of a building or structure that is nonconforming as to physical standards of the zone shall only be improved consistent with the provisions in SBMC §28.87.030.D.:

- a. New fences;
- b. New windows;
- c. New doors;
- d. Replace windows with doors;
- e. New ground floor decks;
- f. New utilities;
- g. Re-roof, including changes in pitch up to 4 in 12;
- h. New interior or exterior wall coverings;
- i. New insulation;
- j. New foundations;
- k. Structural upgrades;
- l. Seismic Safety retrofit improvements;
- m. New exterior water heater enclosures;
- n. Interior floor plan changes that do not increase the residential density on site or do not increase the amount of habitable space on site, including converting existing habitable space to bathrooms;
- o. New covered or uncovered parking spaces, up to the minimum number required by this Title for the existing dwelling units;
- p. Demolition and replacement, pursuant to the conditions in Section 28.87.038.B of this Title; or
- q. Other improvements which neither increase the residential density on site, add floor area, nor increase the amount of habitable space.

**2. Residential Uses in the M-1 Zone.** Buildings or structures containing residential uses in the M-1 Zone may be improved and upgraded as allowed in Paragraph 28.87.030.E.1., above, provided the following conditions are met:

- a. There is no increase in floor area, including accessory buildings;

b. There is no increase in residential density;  
 c. If a proposal to upgrade or improve a residential property in the M-1 zone requires discretionary review by the City, notice of such discretionary review shall be given as required by SBMC Sections 22.22.132, 22.68.040, or 28.92.060, depending on the reviewing body.

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**3. Neighborhood Markets in Residential Zones.** Nonconforming neighborhood markets in residential zones that are properly permitted as of September 1, 1998 may be improved and upgraded as allowed in Paragraph 28.87.030.E.1. above, subject to the following additional conditions:

a. There is no increase in floor area;  
 b. If a proposal to upgrade or improve a neighborhood market in a residential zone requires discretionary review by the City, notice of such discretionary review shall be given as required by SBMC Sections 22.22.132, 22.68.040, or 28.92.060, depending on the reviewing body.

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For the purpose of this Section, a neighborhood market shall be defined as a small-scale market that may sell a full range of food and convenience products, including meat, dairy, vegetables, fruits, dry goods, beverages, and prepared food for off-site consumption.

4. Any part of a building, structure or land occupied by such a nonconforming use which is changed to or replaced by a use conforming to the provisions of this title shall not thereafter be used or occupied by a nonconforming use.

5. Any part of a building, structure or land occupied by such a nonconforming use, which use is discontinued or ceases for a period of one (1) year or more, shall not again be used or occupied except by a use allowed by the applicable zoning. This time limit shall not apply to a nonconforming use in a building or structure or on land located in an area which the City Council has, by resolution, found to be impacted by governmental action provided (i) the nonconforming use is resumed within one year of the completion of the governmental action and (ii) the nonconforming use is not more intense than the use which existed prior to the governmental action.

6. If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same or a more restrictive classification. In areas found by the City Council to be impacted by governmental action, any interim use not conforming to the zoning designation but found appropriate by the Planning Commission may be established upon issuance of a conditional use permit.

7. The foregoing provisions of this section shall also apply to buildings, structures, land or uses which hereafter become nonconforming due to any reclassification of zones under this title or any subsequent change in the regulations of this title.

8. The provisions of this Chapter 28.87 concerning the physical change, abandonment, structural alteration, removal, discontinuance, reconstruction, repairing or rebuilding of nonconforming buildings, structures and uses shall not apply to public utility buildings, structures and uses. Nothing in this part shall be construed or applied so as to prevent the expansion, modernization or replacement of public utility buildings, structures, equipment and facilities where there is no change of use or increase in area of the property so used.

9. An existing educational institution may use, for all educational purposes, buildings existing on the date that this subsection is adopted.

SECTION 5. Section 28.92.110 of Chapter 28.92 of Title 28 of the Santa Barbara Municipal Code is amended to read as follows:

#### **28.92.110 Modifications.**

Modifications may be granted by the Planning Commission or Staff Hearing Officer as follows:

A. **BY THE PLANNING COMMISSION.** The Planning Commission may permit the following:

1. **Parking.** A modification or waiver of the parking or loading requirements where, in the particular instance, the modification will not be inconsistent with the purposes and intent of this Title and will not cause an increase in the demand for parking space or loading space in the immediate area.
2. **Yards, Lot Area, and Floor Area.** A modification of yard, lot and floor area regulations where the modification is consistent with the purposes and intent of this Title, and is necessary to (i) secure an appropriate improvement on a lot, (ii) prevent unreasonable hardship, (iii) promote uniformity of improvement, or (iv) the modification is necessary to construct a housing development which is affordable to very low-, low-, moderate- or middle-income households.
3. **Fences, Screens, Walls, and Hedges.** A modification of fence, screen, wall and hedge regulations where the modification is necessary to secure an appropriate improvement on a lot and is consistent with the purposes and intent of this Title.
4. **Solar Access.** A modification of height limitations imposed by Section 28.11.020 to protect and enhance solar access where the modification is necessary to prevent an unreasonable restriction. The Rules and Regulations approved pursuant to Section 28.11.040 shall contain criteria for use in making a finding of unreasonable restriction.
5. **Building Height.** A modification of building height limitations for existing buildings or structures that exceed the current building height limit, to allow the exterior of the portion of the building or structure that exceeds the building height limit to be improved or upgraded, provided that the improvements increase neither the height nor the floor area of any portion of the building or structure that exceeds the building height limit, except as otherwise allowed in the Code.
6. **Net Floor Area (Floor to Lot Area Ratio).** A modification of the net floor area standard imposed by Section 28.15.083 where the Planning Commission makes all of the following findings:
  - a. At least four (4) members of the Neighborhood Preservation Committee have voted in support of the modification following a concept review of the project;
  - b. The subject lot exhibits a physical condition (such as the location, surroundings, topography, or the size of the lot relative to other lots in the neighborhood) that does not generally exist on other lots in the neighborhood;
  - c. The physical condition of the lot allows the project to be compatible with

existing development within the neighborhood that complies with the net floor area standard.

B. **BY THE STAFF HEARING OFFICER.** The Staff Hearing Officer may permit modifications in accordance with subsections 1., 2., 3., 4., and 5. above, if the Staff Hearing Officer finds that:

1. The requested modification is not part of the approval of a tentative subdivision map, conditional use permit, development plan, site plan, plot plan, or any other matter which requires approval of the Planning Commission; and
2. If granted, the modification would not significantly affect persons or property owners other than those entitled to notice.